



MEMO ENDORSED

DLA Piper LLP (US)
One Fountain Square
11911 Freedom Drive, Suite 300
Reston, Virginia 20190-5159
www.dlapiper.com

Tara M. Lee
tara.lee@dlapiper.com
T 703.773.4150
F 703.773.5150

January 8, 2014

The Honorable Paul A. Engelmayer
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 1/9/2014

Re: Themis Capital, at al. v. Democratic Republic of the Congo, et al., No. 09-CV-1652 (PAE)

Dear Judge Engelmayer:

On behalf of the Defendants, we write in response to the Court's Order of January 6 which rescheduled the trial of this matter to commence on February 11. Respectfully, we write because, while we understand that the Order was entered in an effort to resolve the scheduling conflict we identified in my letter of January 6, 2014, the Order does not alleviate the conflict, as explained below. Accordingly, we respectfully reiterate our request that the Court reschedule the trial to begin on February 13 and to continue, if necessary, on the next date available to the Court and counsel. Plaintiffs have consented to this relief.

As previously noted, this Court originally set trial in this matter for February 10-11, 2014 and set aside February 13, 2014 in case an additional day of trial is necessary. As explained in my letter of January 6, I am lead counsel for the Defendants in this matter and FG Hemisphere Associates, LLC, et al v. Democratic Republic of Congo, No. 12-56110 (9th Cir.), and a scheduling conflict has arisen due to an oral argument in the Ninth Circuit matter which is scheduled to take place on February 10 and which I was unable to move. Given that the argument will take place in California and I will be returning to the East Coast on February 11, it will not be feasible for me to commence trial in this matter before February 12 which I understand is a Court holiday.¹

It is with great hesitation that I impose on the Court's time again regarding this issue, but this is a matter of substantial importance to the Defendants and I fear that the Plaintiffs'

¹ While not explicitly explained in my letter of January 6, it is for this reason that my letter requested that the trial be rescheduled to start on February 13, a reserve date previously set aside for these proceedings, or the next available date on which two or three consecutive days are available.



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intervening letter motion of January 6 may have caused some confusion regarding the nature of the Defendants' request.² Given the importance of this matter to the Defendants, given their expectation, at the time of engagement, that I serve as lead counsel and given that we are seeking only a two day postponement of the trial date with the Plaintiffs' consent, we respectfully request that the Court issue an order setting trial to commence on February 13, 2014. In doing so, we note that, in consenting to this request, the Plaintiffs have indicated that they do not object to trial being conducted on nonconsecutive days should more than one day of trial be necessary. *See* Email from D. Hranitzky, Esq. to T. Lee, Esq., et al., dated Jan. 2, 2014, attached as Ex. A.³

We appreciate your courtesy in considering this request.

² Following the filing of my letter motion on January 6, Plaintiffs filed a last minute motion hours later which requested a one day postponement of the due date for the parties' pretrial briefs, thus allowing Plaintiffs' brief to be filed yesterday. That one day postponement of the briefing schedule was granted by the Court and entered on the Court's ECF system yesterday morning, shortly before the Order directing a one day postponement of the trial date.

³ In the interest of full disclosure, we also wish to update the Court with respect to continued and increasing communications difficulties with our clients. As we indicated in correspondence in October and at the recent pretrial conference, the DRC government is in an uncertain state of transition which has made client communications very difficult. *See* Ltr. From D. Mateyaschuk, Esq. to Hon. Paul A. Engelmayer, dated October 29, 2013 (Dkt. No. 165). Based on news reports over the last two weeks and our own inability to communicate, it appears that the government has further destabilized over the ensuing weeks. For example, a December 31, 2013 Reuters article reports that military clashes over an armed uprising in the DRC's capital last week resulted in the deaths of 103 people, including 8 soldiers. *See* Ex. B. Since the pretrial conference, no current government officials have responded to our communications. We have, for example, not even been able to get client guidance regarding which proceeding – the trial of this matter or the Ninth Circuit argument – the client would prefer to have lead counsel attend if a choice is required. While the cabinet positions of the DRC remain in transition, we understand that no one in the DRC government is authorized to make important case decisions, to approve our pleadings or decisions, or provide even minimal or general guidance regarding either settlement discussions or case strategy. While I feel compelled to disclose the current difficulties given the possibility that the situation will not resolve, we will continue to try to resolve these issues and will keep the Court and counsel apprised.



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Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Tara M. Lee'.

Tara M. Lee
Partner

DLA Piper LLP (US)

The request is denied. If the parties agree that the trial will not require the full two days, the Court is open to commencing the trial midday on February 11, 2014 to accommodate counsel's travel back from California.

1/9/14

SO ORDERED:

A handwritten signature in cursive script, appearing to read 'Paul A. Engelmayer'.

HON. PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE